

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for **R.P.**, and Denise L.,)
by and for **K.L.**,)

Plaintiffs)

v.)

SCHOOL DISTRICT OF THE CITY)
OF ERIE, PENNSYLVANIA; JANET)
WOODS, Individually and in her Capacity)
as Principal of Strong Vincent High)
School; and **LINDA L. CAPPABIANCA**,)
Individually and in her Capacity as)
Assistant Principal of Strong Vincent High)
School,)

Defendants)

Civil Action No. 03-390 Erie

JURY TRIAL DEMANDED

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION IN LIMINE

Defendants The School District of the City of Erie, Pennsylvania and Linda L. Cappabianca respectfully submit the following Defendants' Response to Plaintiffs' Motion in Limine.

1. Defendants recognize that **Fed.R.Civ.P. 611(c)** permits the use of leading questions on direct examination stating, "Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony."
2. Defendants also recognize that leading questions on direct examination are particularly suited where the witness is a child, or an adult with communication problems. **Note to Subdivision (c) of Fed.R.Civ.P. 611.**
3. The possibility of a need for the use of leading questions on direct examination of the minor plaintiffs in this case is enhanced by (a) the sensitive nature of the subject matter of much of the testimony and (b) the less-than-complete communications skills of the plaintiffs.

4. Defendants also agree with plaintiffs that a definitive ruling on this issue is not possible in advance of trial and that the application of Rule 611(c), while clearly within the discretion of the Court, should be applied as the testimony is developed so that the nature and extent of the need for allowing leading questions on direct examination may be understood by the Court.

5. Defendants have no objection to the relief requested in Plaintiffs' Motion in Limine, that is, essentially that the Court simply apply Fed.R.Evid.611(c) to the direct examination of plaintiffs as they testify. However, it is respectfully suggested that such a request is not the proper subject of a motion in limine.

WHEREFORE, defendants The School District of the City of Erie, Pennsylvania and Linda L. Cappabianca respectfully request that Plaintiffs' Motion in Limine be denied.

/s/ James T. Marnen

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Attorney for Defendants,
The School District of the City of Erie,
Pennsylvania and Linda L. Cappabianca

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for **RACHEL P.**, and
Denise L., by and for **KRISTINA L.**,

Plaintiffs

V.

SCHOOL DISTRICT OF THE CITY OF ERIE, PENNSYLVANIA; JANET WOODS, Individually and in her Capacity as Principal of Strong Vincent High School; and **LINDA L. CAPPABIANCA**, Individually and in her Capacity as Assistant Principal of Strong Vincent High School,

Defendants

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of January, 2006, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen
James T. Marnen

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